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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 182

PINELLAS ICE AND COLD STORAGE COMPANY,
PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 27, 1932

CERTIORARI GRANTED OCTOBER 10, 1932

(36,879)

(36,879)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 31, 1932

[fols. a-c] [Caption omitted]

[fol. 1]

BEFORE U. S. BOARD OF TAX APPEALS

Docket No. 40636

PINELLAS ICE & COLD STORAGE CO., Petitioner,

versus

COMMISSIONER OF INTERNAL REVENUE, Respondent

Appearances:

For petitioner: Edward C. Lake, Esq., A. L. Hopkins, Esq., Chas. D. Hamel, Esq., Benj. H. Saunders, Esq., Walter A. Cooper, Esq., John Enrietto, Esq.
For respondent: F. R. Shearer, Esq.

DOCKET ENTRIES

1928.

Sept. 14. Petition received and filed. Taxpayer notified. (Fee paid.)

Sept. 15. Copy of petition served on General Counsel.

Oct. 30. Motion for order to show cause filed by General Counsel.

Nov. 3. Copy of motion served on taxpayer. Hearing date set for Nov. 21, 1928.

Nov. 14. Notice of appearance of Chas. D. Hamel, Benj. H. Saunders and John Enrietto as counsel for taxpayer filed.

Nov. 21. Hearing had before Mr. Littleton on respondent's motion. Petition to be amended as to verification and show appeal by officers as trustees in dissolution of dissolved corporation. 30 days to amend.

[fol. 2]

Nov. 21. Order giving petitioner 30 days to file amended petition—respondent usual time to answer, entered.

1928.

Dec. 14. Order giving petitioner until Jan. 21, 1929, file amended petition—respondent usual ti to answer entered.

1929.

Jan. 19. Motion for a continuance of 30 days to ame petition filed by taxpayer. 1/21/29 grant

Feb. 20. Motion for extension of 15 days to file amend petition filed by taxpayer. 2/21/29 grant

Mar. 7. Amended petition filed by taxpayer.

Mar. 8. Copy of amended petition served on Gene Counsel.

Apr. 26. Answer to amended petition filed by Gene Counsel.

Apr. 30. Copy of answer served on taxpayer—Gene Calendar.

Dec. 6. Hearing set Feb. 27, 1930.

1930.

Feb. 26. Notice of appearance of Edward C. Lake as cou sel for taxpayer filed.

Feb. 27-28. Hearing had before Chas. M. Trammell, Div sion 2, on merits. Petitioner given 30 da for original brief; respondent 15 days f reply and 15 days to petitioner to reply respondent's brief.

Feb. 28. Amended answer to amended petition filed General Counsel.

Mar. 4. Transcript of hearing of Feb. 27 and 28, 193 filed.

Mar. 25. Motion for extension to April 10, 1930, to fi brief filed by taxpayer. 3/25/30 granted.

[fol. 3]

Apr. 7. Brief filed by Taxpayer. 4/9/30 copy served General Counsel.

Apr. 22. Brief filed by General Counsel.

May 2. Reply brief filed by taxpayer. 5/3/30 cop served on General Counsel.

Nov. 24. Findings of fact and opinion rendered—Chas. Trammell, Division 2. Judgment will be e tered under Rule 50.

Dec. 8. Motion to enter order approving deficiency as d termined by Commissioner filed by Genera Counsel.

1930.
Dec. 16. Hearing set Jan. 7, 1930, under Rule 50.
Dec. 18. Order correcting report promulgated Nov. 24, 1930, entered.
1931.
Jan. 7, Hearing had before Mr. Trammell on settlement under Rule 50. Proposed order submitted.
Jan. 9. Decision entered—Chas. M. Trammell, Division 2.
July 3. Petition for review by U. S. Circuit Court of Appeals (5) with assignments of error filed by taxpayer.
July 3. Proof of service filed.
July 29. Agreed præcipe filed.

BEFORE UNITED STATES BOARD OF TAX APPEALS

[Title omitted]

PETITION, AUGUST 28, 1928—Filed Sept. 14, 1928

The above-named petitioner hereby petitions for a re-
determination of the deficiency set forth by the Commis-
[fol. 4] sioner of Internal Revenue in his notice of de-
ficiency (IT:AR:A-2:RL-60D) dated July 17, 1928, and, as a basis of its proceeding, alleges as follows:

1. The petitioner is a Florida Corporation with its principal office at St. Petersburg, Florida.

2. The notice of deficiency (a copy of which is attached hereto marked "Exhibit 'A'") was mailed to the petitioner on July 17, 1928.

3. The taxes in controversy are income taxes for the calendar year 1926 and for Seventy-four Thousand Six Hundred Seventy-three 50/100 Dollars ($74,673.50).

4. The determination of tax set forth in said notice of deficiency is based upon the following error:
(a) The inclusion in income by the Commissioner of a gain upon the disposition of assets by the petitioner.

5. The facts upon which the petitioner relies as the basis for this proceeding are as follows:

(a) The petitioner was engaged in the business of manu facturing and selling ice and its assets consisted mainl of land, buildings, machinery and equipment.

(b) On November 4, 1926, the petitioner made an agree ment with the National Public Service Corporation to se to the latter corporation all of its assets, except one unim proved piece of land.

(c) The sales price of the assets was $1,400,000, of whic $400,000 was to be paid in cash upon the closing date o [fol. 5] the contract and $1,000,000 was to be represente by promissory notes and the notes were to be secured b mortgage bonds or other collateral.

(d) The National Public Service Corporation agreed t cause the formation of a new corporation to be organize under the laws of Florida, to carry out the contract o behalf of the National Public Service Corporation.

(e) A Florida corporation was organized for the fore going purposes under the name of the Florida West Coas Ice Company.

(f) The contract was closed on December 15, 1926. Th petitioner transferred its assets to the Florida West Coas Ice Company and on or about that date received $400,00 in cash and the remainder in promissory notes of th Florida West Coast Ice Company.

(g) On November 18, 1926, the stockholders of the pe titioner ratified the contract of sale and made a forma statement of their desire to dispose of all the petitioner' assets. On December 7, 1926, the directors of the peti tioner ratified the contract and noted the stockholders' de sire to dispose of all the assets. On January 20, 1927, th directors and the stockholders authorized the distributio to the stockholders of the net proceeds of the sale of th petitioner's assets, the distribution of all other earning of the petitioner and the dissolution of the Company.

(h) By the terms of the contract of sale, the petitione agreed to convey its assets without encumbrance or lien.

(i) At the time that the contract was made, the liabili ties of the petitioner for mortgages on the real estate an [fol. 6] for deferred payments on machinery and equip ment were in excess of $400,000.

(j) The cash payment received by the petitioner on ac count of the sales price was expended to cancel the liabili

ties in the nature of liens against the real estate and machinery and equipment.

(k) The promissory notes representing the remainder of the sales price, namely, $1,000,000, were paid by the Florida West Coast Ice Company to the petitioner at various times between January and December, 1927.

(l) The petitioner distributed the proceeds of the sale to its stockholders at various times between January and December, 1927, making the distributions on the same day or immediately after receipt of the payments from the Florida West Coast Ice Company.

(m) The gain derived by the petitioner from the sale of assets, after considering selling expenses, was $552,-144.12.

6. Wherefore, the petitioner prays for relief from the deficiency asserted by the petitioner on the following and each of the following particulars:

(a) That the Board may find that the transaction whereby the petitioner disposed of its assets was a reorganization within the meaning of Section 203, (h) (i) of the Revenue Act of 1926, in that the petitioner disposed of substantially all its properties.

(b) That the Board may find that no gain shall be recognized to the petitioner under the provisions of Section 203, (b) (3), (c) and (c) (1) of the Revenue Act of 1926, in [fol. 7] that the petitioner exchanged its properties for money and securities in pursuance of a plea of reorganization and distributed the proceeds in pursuance of such a plan.

Wherefore, the petitioner prays that the Board may hear and determine its appeal, and the petitioner further prays that the Board may give and grant such other and further relief as the Board may deem fit and proper.

(Signed) Walter A. Cooper, Counsel for Petitioner.

c/o Barrow, Wade, Guthrie & Co., 120 Broadway, New York City.

Duly sworn to by Leon D. Lewis. Jurat omitted in printing.

[fol. 8] EXHIBIT "A" TO PETITION

Treasury Department, Washington

IT:AR:A-2. RL-60D

Jul. 17, 1928.

The Pinellas Ice and Cold Storage Company, 201 Lewis Building, St. Petersburg, Florida.

SIRS: In accordance with the provisions of Section 279 (a) of the Revenue Act of 1926, there has been assessed against you an income and profits tax amounting to $74,673.50 for the taxable year 1926, the details of which are set forth in the attached statement.

In accordance with the provisions of Section 274 (a) of the same Act, you are allowed sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter within which to file a petition with the United States Board of Tax Appeals, contesting in whole or in part the correctness of this determination.

Respectfully, D. H. Blair, Commissioner, By ——, Deputy Commissioner.

Enclosure: Statement, M. B. S-1.

Statement

IT:AR:A-2. RL-60D

July 17, 1928.

In re The Pinellas Ice & Cold Storage Company, 201 Lewis Building, St. Petersburg, Florida

[fol. 9]

Year.	Deficiency in tax
1925	None
1926	$74,673.50
Total	$74,673.50

1925

No additional tax.

1926

Net income reported on return		$78,365.24
Add:		
1. Organization expense	$992.95	
2. Profit on sale of assets	552,144.12	
		553,137.07
Net Income as Adjusted		$631,502.31

Explanation of Adjustments

1. Organization expense is not an allowable deduction as an expense. See Article 582 Regulations 65.

2. Profit on the sale of capital assets is computed in accordance with Article 1591 of Regulations 69 as follows:

Sale price		$1,400,000.00
Cost:		
Fifth Avenue Plant	$253,275.62	
Old plant, Clearwater	33,564.95	
New plant, Clearwater	151,815.94	
New plant, Largo	121,291.25	
Real estate, Largo	20,726.10	
30th Avenue plant	171,506.42	
30th Avenue, Real estate	10,050.45	
Plant, Safety Harbor	12,500.00	
Total	$720,730.73	

[fol. 10]

Brought Forward		$1,400,000.00
	$720,730.73	
Plant, Tarpon Springs	75,506.99	
Sub-stations	799.99	
Office, furniture and fixtures	3,399.70	
Delivery equipment	33,154.60	
Inventory	1,132.70	
		834,724.71
Gross profit		$565,275.29

Add:		
Profit on Blitch property		3,640.00
Depreciation deducted in 1925		27,521.35
Depreciation deducted in 1926		25,857.48
Total		$625,294.12
Deduct:		
Cost of real estate omitted above	$59,592.57	
Legal expenses	10,072.40	
General sales expense	3,485.03	
		73,150.00
Net profit on sales		$552,144.12

Computation of Tax

Net Income	$631,502.31
Amount of tax at 13½%	85,252.81
Original tax	10,579.31
	$74,673.50

It is held by this office that since the assets of the old corporation were sold to a new corporation, it is not a reorganization as defined by Section 203 of the Revenue Act of 1926.

[fol. 11] Payment should not be made until a bill is received from the Collector of Internal Revenue for your district, and remittance should then be made to him.

MBS-1.

Before United States Board of Tax Appeals

[Title omitted]

Amended Petition—Filed March 7, 1929

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (IT: AR: A-2: RL-60D) dated July 17, 1928, and, as a basis of its proceeding, alleges as follows:

1. The petitioner was a Florida corporation with its principal office at St. Petersburg, Florida. Having been dissolved on or about February 28, 1928, this appeal is brought by the parties in interest, the former directors, who are made trustees under Section 6023 (Compiled General Laws of Florida, 1927) and expressly authorized to sue and be sued on behalf of the dissolved corporation.
[fol. 12] 2. The notice of deficiency is dated, and purports to have been mailed, July 27, 1928.

3. The taxes in controversy are income taxes for the calendar year 1926 in the amount of $74,673.50.

4. The determination of tax set forth in said notice of deficiency is based upon the following errors:

(a) The respondent erred in including in petitioner's taxable income for the calendar year 1926 the amount of $552,144.12 as "Profit on Sale of Assets."

(b) The respondent erred in failing and refusing to find that neither gain nor loss is to be recognized from the transfer of its property to the West Coast Ice Company pursuant to a plan of reorganization, for cash and securities.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) Pursuant to a plan of reorganization the petitioner, on November 4, 1926, entered into an agreement with the National Public Service Corporation providing for the organization of a new corporation to acquire the assets of the petitioner, together with those of the Citizens Ice & Cold Storage Company. The Florida West Coast Ice Company was incorporated on or about December 1, 1926, and to it were transferred on December 15, 1926, substantially all the assets of the petitioner, including ice and cold storage plants, machinery, equipment and certain real estate. The petitioner received $400,000 in cash and $1,000,000 in securities of the Florida West Coast Ice Company. Certain liabilities of the petitioner were paid off and the remainder of the proceeds distributed to the stockholders of the petitioner in pursuance of the plan of reorganization.

[fols. 13-17] 6. The petitioner prays for relief from the deficiency asserted by the respondent on the following particular:

(a) That the Board may find that neither gain nor loss is to be recognized upon the transfer of petitioner's assets to the Florida West Coast Ice Company pursuant to a plan of reorganization.

Wherefore, the petitioner prays that the Board may hear and determine its appeal, and the petitioner further prays that the Board may give and grant such other and further relief as in the premises the Board may deem fit and proper, and if the Board shall find that the petitioner has overpaid its taxes for the years under review, the Board may order and direct refund of said taxes overpaid with interest thereon.

Charles D. Hamel, Richard S. Doyle, Edward H. McDermott, Benjamin H. Saunders.

Duly sworn to by John S. Taylor et al. Jurats omitted in printing.

[fol. 18] BEFORE U. S. BOARD OF TAX APPEALS

ANSWER TO AMENDED PETITION—Filed April 26, 1929

Comes now the Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, and for answer to the amended petition of this taxpayer admits, denies and alleges as follows:

1. Admits the allegations contained in paragraph 1 of the amended petition.

2. Denies the allegations contained in paragraph 2 of the amended petition.

[fol. 19] 3. Admits that the taxes in controversy are income taxes for the calendar year 1926, as alleged in paragraph 3 of the amended petition.

4. Denies the allegations of error set forth in paragraph 4 of the amended petition.

5. Admits that all the assets of the petitioner, including ice and cold storage plants, machinery, equipment and certain real estate, were disposed of during 1926, and that the petitioner received therefor $400,000 in cash and $1,000,000.00 in securities of the Florida West Coast Ice Company, as alleged in subparagraph (a) of paragraph 5 of the amended petition, but denies all other allegations of fact contained in the said subparagraph.

Denies each and every allegation of fact contained in the amended petition not hereinbefore specifically admitted, qualified or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and that the amended petition be dismissed and the appeal denied.

(Signed) C. M. Charest, General Counsel, Bureau of Internal Revenue. Of Counsel: F. R. Shearer, Special Attorney, Bureau of Internal Revenue.

BEFORE U. S. BOARD OF TAX APPEALS

AMENDED ANSWER TO AMENDED PETITION—Filed at hearing Feb. 28, 1930

Comes now the Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel, Bureau of [fol. 20] Internal Revenue, and for amended answer to the amended petition of this taxpayer admits, denies and alleges as follows:

1. Admits the allegations contained in paragraph 1 of the amended petition.

2. Admits that the notice of deficiency was mailed July 17, 1928.

3. Admits that the taxes in controversy are income taxes for the calendar year 1926, as alleged in paragraph 3 of the amended petition.

4. Denies the allegations of error set forth in paragraph 4 of the amended petition.

5. Admits that certain assets of the petitioner, including ice and cold storage plants, machinery, equipment and cer-

tain real estate, were sold during 1926 for the sum of $1,400,000 payable $400,000 in cash and the balance as follows: $500,000 on or before the 31st day of January, 1927, $250,000 on or before the first day of March, 1927, and $250,000 on or before the first day of April, 1927, the deferred installments of the purchase price above mentioned to be evidenced by 6% notes of the Florida West Coast Ice Company payable on or before the dates specified, and that during 1926 the petitioner received $400,000 in cash and $1,000,000 in promissory notes of the Florida West Coast Ice Company. Denies all other allegations of fact contained in sub-paragraph (a) of paragraph 5 of the amended petition.

Denies each and every allegation of fact contained in the amended petition not hereinbefore specifically admitted, qualified or denied.

[fol. 21] Wherefore, it is prayed that the Commissioner's determination be approved and that the amended petition be dismissed and the appeal denied.

C. M. Charest, R. S., General Counsel, Bureau of Internal Revenue. Of Counsel: F. R. Shearer, Special Attorney, Bureau of Internal Revenue.

Before United States Board of Tax Appeals

21 B. T. A., —. Docket No. 40636

Pinellas Ice & Cold Storage Company, Petitioner,

vs.

Commissioner of Internal Revenue, Respondent

Promulgated November 24, 1930

Held that the petitioner sold its assets for cash paid and to be paid in the future and the transaction does not come within the reorganization provisions of the Revenue Act of 1926 relating to exchanges.

E. C. Lake, Esq., and A. L. Hopkins, Esq., for the petitioner.

F. R. Shearer, Esq., for the respondent.

Findings of Fact and Opinion

This is a proceeding for a redetermination of a deficiency in income tax for 1926 in the amount of $74,673.50. The sole question is whether any taxable gain was realized by [fol. 22] petitioner from the transfer of its property to the Florida West Coast Ice Company in 1926. If there was taxable gain there is no controversy as to the amount.

Findings of Fact

Petitioner was incorporated under the laws of Florida in January, 1925, and was thereafter engaged in the business of the manufacture and sale of ice in and around St. Petersburg, Florida. Substantially the same stockholders owned and controlled the Citizens Ice and Cold Storage Company, hereinafter called Citizens Company, a corporation engaged in the same business in the same locality.

In February, 1926, negotiations were begun by Leon D. Lewis, the general manager of both of the above companies, for the disposition of the business and property of the two companies to the National Public Service Corporation, which was a holding company for certain interests of A. E. Fitkin of New York. These negotiations continued through the summer of 1926. The Fitkin interests desired to acquire the business of both companies, but were unwilling to consider the acquisition of one without the other. All the directors and stockholders of both companies were anxious to dispose of all the properties of the two companies, and upon the disposal of the properties to discontinue business, dissolve the corporations, and distribute the proceeds. The progress of the negotiations with the National Public Service Corporation was reported by Leon D. Lewis from time to time to the directors and stockholders of petitioner and Citizens Company and was discussed by the stockholders and directors of these companies. Of the fifteen stockholders of petitioner, ten of them, owning over 80 per cent of its stock, were also directors. All lived in St. Petersburg or the [fol. 23] immediate vicinity, and Lewis was in constant touch with them during all of the negotiations with the Fitkin interests. It was definitely understood and agreed by all of the stockholders and directors that upon the making of the transfer of the properties, the affairs of the two corpo-

rations would be wound up, the assets distributed to the stockholders in liquidation, and the corporations dissolved. In October, 1926, the representative of the National Public Service Corporation and the representatives of petitioner and of Citizens Company reached an agreement as to the consideration and the terms of the transfer of the properties of the two companies. In October, 1926, the directors of petitioner and the Citizens Company met and unanimously approved the terms of the agreement with the National Corporation, and at that time confirmed their prior agreements and understandings that the proceeds of the transfer would be distributed and the corporations dissolved.

On November 4, 1926, a written agreement was entered into between petitioner and the National Public Service Corporation relating to the terms of the transfer of petitioner's property and conditioned upon the transfer of the property of Citizens Company, as follows:

Agreement made this 4th day of November, 1926, by and between Pinellas Ice & Cold Storage Company, a Florida corporation, hereinafter sometimes called the 'Vendor', party of the first part, and National Public Service Corporation, a Virginia corporation, hereinafter sometimes called the 'Purchaser', party of the second part,

Witnesseth:

First. The Vendor agrees to sell and the Purchaser agrees to purchase all of the real estate set forth in Schedule A hereto annexed, together with all physical property, [fol. 24] plants, buildings, equipment, generators, machinery, distribution systems, supplies, rights, easements and privileges, and all other property, other than real estate not described in Schedule A, cash on hand, accounts and bills receivable, and books of account, now owned or used by the Vendor in connection with its ice or cold storage business or which may hereinafter be acquired prior to the closing of this contract, together with the goodwill of the business, free and clear of all defects, liens, encumbrances, taxes and assessments for the sum of $1,400,000, payable as hereinafter provided.

Second. The Vendor further agrees to assign to the Purchaser (1) its contract with Wright Brothers in con-

nection with the latter's ice business at Dunodin; (2) its lease with Pinellas County Power Company of the building in Clearwater in which the old ice plant is located; and (3) its power contract with Pinellas County Power Company.

Third. The date and place of closing and terms of settlement are as follows:

(a) The date of closing shall be at eleven o'clock A. M. on December 15, 1926, and the place of closing at the office of A. E. Fitkin & Company, 165 Broadway, New York City.

(b) At said time and place the Vendor shall deliver to the Purchaser instruments of conveyance and transfer by general warranty in form satisfactory to the Purchaser of the property set forth in paragraphs First and Second hereof.

(c) At said time and place the Purchaser shall pay to the Vendor the sum of $400,000.00 in cash. The balance of the purchase price, to-wit: $1,000,000.00 shall be paid by the Purchaser to the Vendor as follows:

[fol. 25] $500,000.00 on or before the 31st day of January, 1927;

$250,000.00 on or before the 1st day of March, 1927; and

$250,000 on or before the 1st day of April, 1927.

The deferred installments of the purchase price above mentioned shall be evidenced either:

(a) By 6% notes of the Purchaser payable on or before the dates above specified and secured by the deposit thereunder as collateral of either (1) notes and/or mortgage bonds of the proposed Florida corporation referred to in article Fourteenth hereof not less in aggregate principal amount than the notes of the Purchaser given to the Vendor; or (2) other collateral satisfaction to the Vendor; or

(b) By 6% notes of the proposed Florida corporation referred to in article Fourteenth hereof, payable on or before the dates above specified, and secured by the deposit thereunder as collateral of either (1) mortgage bonds of such Florida corporation ot less in aggregate principal amount than the notes of the Florida corporation given to the Vendor; or (2) other collateral satisfactory to the Vendor.

In case mortgage bonds of such proposed Florida corporation are deposited as collateral to notes as above provided for, such mortgage bonds shall have a first lien on the property and assets covered by this agreement.

Tenth. The Vendor agrees that it will procure for the Purchaser an agreement to be signed by E. T. Lewis and Leon D. Lewis to the effect that they will not engage, di- [fol. 26] rectly or indirectly, in the manufacture or sale of ice or refrigeration in Pinellas County, Florida, for a period of ten years from the date of closing of this agreement.

Thirteenth. In the event that Citizens Ice & Cold Storage Company is unable for any reason to fulfill its covenants and agreements under a contract between it and the Purchaser, bearing even date herewith, then the Purchaser, at its option, shall be released from its covenants and agreements herein set forth without claim of any sort on the part of the Vendor for damages or otherwise. If Citizens Ice & Cold Storage Company is able to fulfill its covenants and agreements under said contract of even date herewith but the Purchaser fails to fulfill or perform the covenants and agreements on its part contained in said contract with Citizens Ice & Cold Storage Company of even date herewith, then the Vendor shall be released from its covenants and agreements herein set forth without claim of any sort on the part of the purchaser for damages, or otherwise.

Fourteenth. Unless the Purchaser determines to cancel this agreement and not to purchase the property and assets covered hereby as hereinbefore provided, the Purchaser agrees to cause the formation of a corporation under the laws of the State of Florida and to cause such corporation to take title to the property and assets covered hereby and assume the covenants and agreements on the part of the Purchaser contained herein, but in such event the Purchaser shall remain liable for the performance by such Florida corporation of the covenants and agreements herein contained.

Schedule A of the agreement listed the tracts of real estate upon which petitioner's plants and buildings were located, and Schedules B and C listed the liens and encumbrances upon the real estate, plants, and equipment.

[fol. 27] The $400,000 cash payment provided for in the agreement was determined as the amount necessary to dis-

charge all debts and liens and encumbrances on the property of petitioner.

On the same date, November 4, 1926, an agreement of similar import with respect to the property of Citizens Company was entered into between that company and the National Public Service Corporation. Paragraph sixteenth thereof was similar to Paragraph Thirteenth of the agreement with Petitioner and provided that the consummation of the transfer would depend upon the corresponding transfer of petitioner's property.

At the request of the National Public Service Corporation, the stockholders and directors of petitioner and the Citizens Company approved the two agreements. This was done at the same time and place on December 7, 1926, and for the purpose of effectively passing title to the properties of the two companies.

Early in December, 1926, $33,000 was advanced on behalf of the National Public Service Corporation to petitioner for the purpose of retiring a like amount of outstanding bonds of petitioner. These bonds were part of an issue of $300,000, of which only $33,000 were outstanding. Petitioner paid over this amount to the trustee under the bond issue and subsequently the entire amount of bonds of this issue was canceled and destroyed.

Pursuant to the agreement, National Public Service Corporation caused to be incorporated the Florida West Coast Ice Company, and a charter to the latter company was granted on December 6, 1926.

On December 17, 1926, Lewis on behalf of petitioner and Citizens Company, met with the representatives of National Public Service Corporation and the Fitkin interests in New York City for the purpose of closing the transactions. There [fol. 28] were also present representatives of creditors of petitioner, whose claims were to be satisfied out of the cash payment provided for in the agreement of November 4, 1926. At this meeting deeds and other instruments of conveyance to the property of petitioner and Citizens Company, respectively, were delivered to the Fitkin representatives. These instruments were made out to Florida West Coast Ice Company. Checks of the Fitkin interests were made out and delivered to the respective creditors of petitioner and Citizens Company. Approximately $91,000 was

thus paid to take up the deferred payment notes of Arctic Ice Machine Company and $135,000 to take up the mortgage notes held by Central National Bank and Trust Company of St. Petersburg. A cash payment of approximately $137,000 was also made to petitioner. These payments to petitioner and its creditors, together with the advance of $33,000 previously made to take up outstanding bonds of petitioner, made up the cash payment of $400,000 provided for in the agreement of November 4, 1926. Petitioner also received at this time, pursuant to the agreement, four notes of Florida West Coast Ice Company, in the respective amounts of $500,000, $250,000, $150,000, and $100,000, maturing serially from January 31, 1927, to April 1, 1927. The note of $100,000 was conditioned as to payment upon petitioner removing a cloud upon the title to one of its plants. As collateral security for these notes there were deposited bonds of Florida West Coast Ice Company which were secured by the properties thus acquired by that company from petitioner and Citizens Company. The agreement of November 4, 1926, made by Citizens Company was likewise carried out according to its terms at the same time.

The cash payment received by petitioner on December 17, 1926, amounting to approximately $137,000, was immediately used by petitioner to take up notes at banks and to pay off other liabilities, and virtually all of this sum was thus paid out by petitioner before January 20, 1927.

[fol. 29] On January 20, 1927, pursuant to the plan theretofore made by the stockholders and directors of petitioner, formal resolutions were passed providing for the winding up of the affairs of the corporation, distribution of the assets and the dissolution of the corporation. As stated, similar action was taken by Citizens Company at the same time.

The notes of Florida West Coast Ice Company were paid on or before the respective due dates, thereof, except the $100,000 note, which was paid in November, 1927, after the flaw in title to one of petitioner's plants had been cleared up. Upon receiving payment of these notes, petitioner immediately distributed the proceeds to its stockholders as liquidating dividends. The outstanding certificates of shares of stock of petitioner had been surrendered prior to the distributions in liquidation and remained in the custody of the company thereafter. Indorsements of the payment

of liquidating dividends were made upon the several certificates. Pursuant to the resolution of January 20th, a small amount of cash was retained as a contingent fund for possible expenses.

The property conveyed to the Florida West Coast Ice Company pursuant to the contract of November 4, 1926, covered all of the assets of petitioner except a few scattered vacant lots which were worth not in excess of $10,000; some accounts receivable from customers which did not exceed $3,000 in face value, and a small amount of cash on hand. The original plan of the directors and stockholders of petitioner provided that any miscellaneous items of assets of the company which would not be disposed of to the Fitkin interests would be turned over to a new holding company to be organized for that purpose. In pursuance of this plan Citizens Holding Corporation was organized early in 1927, and all of the remaining assets of petitioner, except what was to be retained to meet debts and contingent liabilities, were thereupon turned over to Citizens [fol. 30] Holding Corporation as trustee for petitioner's stockholders. The value of the assets so retained and conveyed to Citizens Holding Corporation was less than 1 per cent of the value of the entire assets of petitioner. In other words, more than 99 per cent of the value of the total property was transferred to the Florida West Coast Ice Company.

The transfer of the assets of petitioner to the Florida West Coast Ice Company in exchange for cash and notes, the distribution in liquidation of the proceeds thereof to the stockholders of petitioner, and the dissolution of petitioner were made in accordance with and pursuant to a plan of the officers and stockholders of petitioner, which plan was formulated prior to the execution of the agreements of November 4, 1926, between Citizens Ice & Cold Storage Company and National Public Service Corporation.

The respondent, in determining the deficiency set forth in the notice of deficiency to petitioner, held that petitioner had realized a taxable profit of $552,144.12 from the transaction.

The income-tax return of petitioner for the year 1926 was filed with the Collector of Internal Revenue at Jacksonville, Florida.

Opinion

TRAMMELL:

It is the contention of the petitioner that the transaction here involved comes within the reorganization provisions of the Revenue Act of 1926 and that, the proceeds of the sale or transfer having been distributed pursuant to a plan of reorganization, there was no taxable gain.

The pertinent provisions of the statute are:

Sec. 203. (a) Upon the sale or exchange of property the entire amount of the gain or loss, determined under section 202, shall be recognized, except as hereinafter provided in this section.

[fol. 31] and the following subdivisions of section 203: (b) (3); (d) (1); (e) (1) and (2); (f); (g); and (h) (1) and (2).

Section 203 (a) provides that when there is a sale or exchange of property the entire amount of the gain or loss shall be recognized, with certain exceptions mentioned in the other subdivisions of that section. The question for decision is whether the transaction here comes within any of those exceptions.

Generally, upon the sale or exchange of property taxable gain or loss is recognized. This is true unless the transaction comes within an exception contained in the statute. So far as the provisions of the statute pertinent here are concerned, section 203 (b) (3) and 203 (e), the exception relates to exchanges and not to sales. Section 203 (b) (3) provides that no gain or loss shall be recognized if a corporation a party to a reorganization exchanges property, under the circumstances therein provided, and section 203 (e) provides that if an exchange would be within the provision of paragraph (3) of subdivision (b) if it were not for that fact that money or other property were included in the transaction as a consideration. In other words, in order to come within the exception to the general provisions contained in section 203 (e) there must in the first place clearly be an exchange. This essential requirement must be met in any event, regardless of whether otherwise there might be a reorganization within the meaning

of the statute or whether the other provisions of the statute have been met. We think it is clear*ly* that if property is sold the transaction would not come within the exchange provisions. A sale does not come within either the words or the reason of section 203 (b) (3) or 203 (e). There is a clear legal distinction between a sale and an exchange, and sections 203 (a) (3) and 203 (e) relate only to exchanges, and not to sales.

[fol. 32] The United States Supreme Court has laid down a rule long recognized and well established in law as to what constitutes a sale. That Court in the case of Williamson v. Berry, 8 How. 495, 543, stated as follows:

> * * * we remark that sale is a word of precise legal import, both at law and in equity. It means at all times, a contract between parties, to give and to pass rights of property for money,—which the buyer pays or promises to pay to the seller for the thing bought. Noy's Max., ch. 42; Shep. Touch., 244.

Congress should be presumed to have had a knowledge of the law as laid down by the Supreme Court and long recognized as to what constitutes a sale, and we must assume that the language used in section 203 was used with that import, especially since the section of the statute involved used both the words "sale" and "exchange" and did not include sales in the exceptions.

Here the transaction was a sale for money. The consideration was to be paid only in money. A portion of the consideration was to be paid in cash and the balance to be paid in the future in money. This to our mind constitutes a real sale of assets rather than an exchange as provided in section 203 (b) (3), 203 (c) or 203 (e) (1).

The notes, although secured by a mortgage, were merely evidences of the payments to be made in the future. It is well recognized that even in the absence of a definite agreement that promissory notes are not to be considered as payments, but merely as evidences of agreement to pay in the future. But in this case we have not only the presumption of law, but the actual agreement of the parties, that the deferred payments were evidenced by notes. Lyman v. United States Bank, 12 How. 225; Peter v. Beverly, 10 [fol. 33] Pet. 532; United States Bank v. Daniel, 12 Pet.

32; King v. McConnell, 57 Fla. 77, 49 So. 539; Our Home Life Ins. Co. v. Peacock, 71 Fla. 35, 70 So. 775; Peacock v. Our Home Life Ins. Co., 73 Fla. 1207, 75 So. 799.

It may well be true that promissory notes secured by the property to be acquired in the transaction may be considered as securities, but the other provisions in the statute must first be met; in other words, there must be an exchange, and when we consider the import to be given to that word, it must necessarily limit the word "securities" as well. When we consider that the statute makes no exception from the general rule as to the taxation of gain derived from sales, but only makes exception as to exchanges in section 203 (a) (3) and 203 (e), we think that the word "securities" does not mean promises of purchase price payments to be made in the future evidenced by notes, although secured by mortgages. The statute clearly contemplated something else than purchase price obligations in these provisions of the statute.

There is no exception to the general rule of taxation where a corporation, although a party to a reorganization, sells its property for money paid in cash or to be paid in cash, although the deferred payments are evidenced by purchase price promissory notes secured by mortgage. Even if we should hold that there was a reorganization in every sense of the word, the petitioner has not brought itself within the exceptions contained in the statute. Considering for the sake of argument that there was a reorganization and that the petitioner involved here was a party to that reorganization, still the petitioner did not exchange property as provided in section 203 (b) (3) or 203 (e). The petitioner simply sold its property for money paid in cash or to be paid in cash.

In view of the foregoing, the transaction not being an exchange, it is unnecessary for us here to discuss or to decide whether there was a reorganization, whether the peti- [fol. 34] tioner here was a party to the reorganization, or whether the petitioner made a distribution in pursuance to a plan of reorganization.

Reviewed by the Board.

Judgment will be entered under Rule 50.

BEFORE U. S. BOARD OF TAX APPEALS

ORDER CORRECTING REPORT

For cause appearing of record, it is

Ordered, that the report and determination in the above entitled proceeding promulgated under date of November 24, 1930, be amended at page 9, second paragraph, by adding after the date November 4, 1926, the words "between petitioner and National Public Service Corporation, and".

(Signed) Charles M. Trammell, Member.

Dated December 18, 1930. RTC:mvw.

BEFORE UNITED STATES BOARD OF TAX APPEALS, WASHINGTON

Docket No. 40636

PINELLAS ICE & COLD STORAGE COMPANY, a Dissolved Corporation, by John S. Taylor, M. W. Ulmer, Leon D. Lewis, Ed. T. Lewis, Henry Sorenson, E. E. Duncan, Chester B. McMullen, Harry D. Ulmer, Roland J. Ulmer, John S. Taylor, Jr., Former Directors of the said Corporation, as Trustees, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent

DECISION

This proceeding came on for hearing January 7, 1931, on respondent's motion in lieu of Rule 50 settlement, filed De- [fol. 35] cember 8, 1930, both parties being represented by counsel. It appears that the proceeding was instituted before the Board September 14, 1928, by the filing of a petition for redetermination in the name of Pinellas Ice & Cold Storage Company, the appeal being taken from the Commissioner's deficiency notice dated July 17, 1928, notifying the taxpayer of the making of a jeopardy assessment, under Section 279 (a) of the Revenue Act of 1926, of a deficiency in Federal income tax amounting to $74,673.50 for the year 1926. Before issue was joined an amended petition was filed March 7, 1929, pursuant to leave granted by the Board

by orders dated November 21, 1928 and December 14, 1928, which amended petition was in the name of said taxpayer as a dissolved corporation by its former directors as trustees and was captioned as above. After answer was filed and due hearing held the Board under date of November 24, 1930, promulgated its report which was corrected by order dated December 18, 1930, and as corrected directed the entry of judgment under Rule 50. By the afore-mentioned motion filed December 8, 1930, respondent moved for the entry of an order approving the deficiency as determined by the Commissioner for the reason that the Board's report made no change in the tax liability of the taxpayer for the year in question, although it was admitted in said motion that since the Board's report of November 24, 1930, namely, on December 1, 1930, the amount of the deficiency determined by the Commissioner had been paid.

Upon consideration of the record herein, and pursuant to the Board's report of November 24, 1930, as corrected by order dated December 18, 1930, it is hereby

Ordered and decided that the correct amount of the deficiency in Federal income tax which should have been as-
[fol. 36] sessed against Pinellas Ice & Cold Storage Company for the calendar year 1926 is $74,673.50 as determined by the Commissioner.

(Signed) Charles M. Trammell, Member United States Board of Tax Appeals.

In United States Circuit Court of Appeals, Fifth Circuit

Petition for Review—Filed July 3, 1931

To the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

Your above named petitioner respectfully shows:

I

This is a proceeding for review by the United States Circuit Court of Appeals for the Fifth Circuit of a decision of the United States Board of Tax Appeals, entered on January 9, A. D. 1931, redetermining a deficiency in corporation income tax for the calendar year 1926 in the amount of $74,673.50.

II

Petitioner was a corporation organized under the laws of Florida, with its principal office at St. Petersburg, Florida, dissolved on or about February 28, 1928. This proceeding is brought on behalf of the corporation by the individuals who were Directors of said corporation at the time of dissolution, who are Trustees for said corporation by virtue of Section 6025 of the Compiled General Laws of Florida, [fol. 37] 1927, and who are authorized to maintain suits on behalf of the dissolved corporation. The income tax return of petitioner, Pinellas Ice & Cold Storage Company for the calendar year 1926 was filed with the Collector of Internal Revenue at St. Petersburg, Florida.

III

The nature of the controversy is as follows:

Petitioner prior to December 15, 1926, was engaged in the business of manufacturing and selling ice. On November 4, 1926, pursuant to a plan of reorganization, it entered into an agreement with the National Public Service Corporation, providing for the organization of a new corporation to acquire the assets of petitioner and, also, of the Citizens Ice & Cold Storage Company. The proposed new corporation was incorporated on or about December 1, 1926, under the name of Florida West Coast Ice Company, and to it were transferred on December 15, 1926, substantially all the assets of petitioner. Petitioner received $400,000 in cash and $1,000,000 in securities of the new corporation, Florida West Coast Ice Company. Certain of petitioner's liabilities were discharged, and the remainder of the proceeds were distributed to petitioner's stockholders in pursuance of the reorganization plan.

The petitioner treated the reorganization as a nontaxable transaction and reported no profit thereon. The Commissioner of Internal Revenue determined that the transaction was taxable and assessed a deficiency against petitioner for the calendar year 1926 in the amount of $74,673.50, which amount, together with interest thereon as provided by law, was paid to the Collector of Internal Revenue at St. Petersburg, Florida, prior to the filing of this Petition for Review. The United States Board of Tax

Appeals, on appeal from the determination of the Commis-
[fol. 38] sioner of Internal Revenue by petitioner, sustained the action of the Commissioner of Internal Revenue and redetermined the deficiency herein complained of.

IV

The United States Board of Tax Appeals committed the following errors upon which petitioner relies as the basis of this proceeding:

(1) The Board of Tax Appeals erred in including in petitioner's taxable income for the year 1926 the amount of $552,144.12 as profit on the transfer of its assets to Florida West Coast Ice Company.

(2) The Board of Tax Appeals erred in failing and refusing to find that neither gain nor loss is to be recognized on the transfer of petitioner's property to the Florida West Coast Ice Company, pursuant to a plan of reorganization, for cash and securities.

(3) The Board erred in not holding, as a matter of law, that the transfer of petitioner's assets to the Florida West Coast Ice Company and the receipt by it of cash and securities, and the distribution of the proceeds thereof to the stockholders of petitioner, pursuant to a plan of reorganization, was a transaction or reorganization upon which no gain or loss would be recognized under the provisions of Section 203 of the Revenue Act of 1926.

Wherefore your petitioner prays that this Court may review the findings of fact, opinion and order of redetermination of the Board of Tax Appeals in this cause and reverse the decision of said Board because of the errors aforesaid, and direct said Board to redetermine the deficiency, if any, against the petitioner, in accordance with law and the evidence, and that this Court may grant such [fol. 39] other and further relief as to it may appear proper in the premises.

Respectfully, Albert L. Hopkins, 1 N. LaSalle St., Chicago, Illinois. E. C. Lake, 1150 Munsey Bldg., Washington, D. C., Attorneys for Petitioner.

Duly sworn to by Albert L. Hopkins. Jurat omitted in printing.

Before U. S. Board of Tax Appeals

Præcipe for Transcript of Record—Filed July 29, 1931

To the Clerk of the United States Board of Tax Appeals:

You will please prepare and transmit a transcript of the record in this cause to the Clerk of the United States Cir-
[fol. 40] cuit Court of Appeals for the Fifth Circuit, and include in said transcript copies duly certified as correct of the following documents:

1. The docket entries of proceedings before the Board in the above entitled cause.
2. Pleadings before the Board.
3. Findings of fact, opinion and decision of the Board.
4. Petition for review.
5. Order or orders enlarging the time for the preparation and delivery of the record.
6. This Præcipe.

Said transcript to be prepared as required by law and the rules of the United States Circuit Court of Appeals for the Fifth Circuit.

A. L. Hopkins, E. C. Lake, Attorneys for Petitioner.

Dated this 29th day of July, A. D. 1931.

The respondent agrees that the transcript of record designated in the foregoing Præcipe is a complete record for the review of this cause and that said record may be prepared and transmitted without further notice to the respondent.

C. M. Charest, General Counsel, Bureau of Internal Revenue, Attorney for Respondent.

Dated this 29th day of July, A. D. 1931.

[fol. 41] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 42] Minute entry of argument and submission, February 24, 1932, omitted in printing.

[fol. 43] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 6347

PINELLAS ICE & COLD STORAGE COMPANY, Petitioner,

versus

COMMISSIONER OF INTERNAL REVENUE, Respondent

Petition for Review of Decision of the United States Board of Tax Appeals (District of Florida)

(March 29, 1932)

Before Bryan, Foster and Walker, Circuit Judges

OPINION OF THE COURT—Filed March 29, 1932

FOSTER, Circuit Judge:

In December 1926, petitioner, the Pinellas Ice & Cold Storage Co., a Florida corporation, disposed of substantially all its property to another corporation. Treating the transaction as a reorganization of the company, in making returns for 1926, petitioner assumed that, under the provisions of Sec. 203, Revenue Act of 1926, no taxable profit had been derived from the transfer. The Commissioner of Internal Revenue disagreed with this and determined that a taxable profit of $552,144.12 had resulted from a sale of assets. A deficiency of $74,673.50 was assessed. On appeal, the Board of Tax Appeals held that the transaction was a sale and affirmed the Commissioner. 21 B. T. A. 425. The findings of facts by the Board are not excepted to. We [fol. 44] may refer to them for the facts in detail.

It appears that petitioner and another corporation, the Citizens' Ice and Cold Storage Co., were engaged in the business of manufacturing and selling ice, in the vicinity of St. Petersburg, Florida. They had substantially the same stockholders and the same general manager, Leon D. Lewis. In February, 1926, negotiations were begun through Lewis with the National Public Service Corporation, a holding company for what was called the Fitkin interests, for the disposition of the business and property of both companies.

These negotiations culminated in separate written agreements, executed on November 4, 1926, for the sale of the properties to a corporation to be created.

The new company, called the Florida West Coast Ice Co., was formed. On December 17th, 1926, substantially all the assets of petitioner were deeded to the new company for $1,400,000, payable $400,000 cash and the balance represented by four notes for the respective amounts of $500,000, $250,000, $150,000 and $100,000, payable serially from January 31, to April 1, 1927. Bonds of the new company were deposited as collateral security for these notes. A similar transaction was had with the Citizens' Ice Co. All of the cash payment went to pay creditors. The notes were paid on or before their due dates, except the note for $100,000, which was not paid until November 1927. As the notes were paid, in accordance with resolutions for the dissolution of petitioner, the proceeds were distributed to its stockholders as liquidating dividends, which were endorsed on the stock certificates that had been previously turned over to petitioner. Only a small amount of cash was retained for contingent expenses. A holding company was organized and the assets not disposed of, about one per cent, were transferred to it as trustee. It is not shown that the stockholders of either petitioner or the Citizens' Company had any interest in the Florida West Coast Ice Company before or after the transfer.

Relying on the provisions of Sec. 203, paragraphs [fol. 45] (b)(3)-(e) (1) and (h)(1)(A) of the Revenue Act of 1926, it is contended by petitioner: that there was a reorganization to which petitioner and the West Coast Co. were parties; that the notes were securities of the new company; that there was an exchange of the property of petitioner for cash and securities; that this was distributed in pursuance of a plan of reorganization; and that therefore no gain to the corporation should be recognized.

Apparently there are no decisions in point and it would be useless to review the cases cited by either side.

Section 203 appeared first in the 1924 Revenue Act. As it is readily available, we need not burden the opinion by setting it out in full. Prior thereto the profit resulting from all exchanges of property was taxable. It is evident that in enacting Sec. 203 Congress intended to exempt from

consideration for either profit or loss transfers of property which were really exchanges of capital assets, and, to a certain extent, to brush aside technicalities in so construing them. It is equally clear that there was no intention to exempt profit arising from an outright sale of property, or an exchange of property, between corporations where there was in fact no reorganization.

There is no doubt that the written agreement of November 4, 1926, for the disposition of petitioner's property to a new corporation, contemplated an outright sale and not an exchange or a reorganization. The conveyance of the property on December 17, 1926, was in form a sale and not an exchange. This is not seriously disputed by petitioner but it is contended that under the definition of paragraph (h) (1) (A) the mere acquisition by the Florida West Coast Ice Co. of substantially all the property of petitioner was a reorganization.

So far as material, Sec. 203 (h), is as follows:

"(h) As used in this section and sections 201 and 204—

"(1) The term 'reorganization' means (A) a merger or consolidation (including the acquisition by one corporation [fol. 46] of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation, or substantially all the properties of another corporation), or (B) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or its stockholders or both are in control of the corporation to which the assets are transferred, * * *"

As applied to corporations the terms "merger" and "consolidation" have well known legal meanings. While the result is practically the same in either event, there is this difference. In a merger one corporation absorbs the other and remains in existence while the other is dissolved. In a consolidation a new corporation is created and the consolidating corporations are extinguished. In either event the resulting corporation acquires all the property, rights and franchises of the dissolved corporations and their stockholders become its stockholders. Royal Palm Soap Co. vs. Seaboard Air Line Ry. Co., 296 Fed. 448; Bouvier's Law Dictionary, (3rd Ed.) p. 2202, verbo "merger."

It must be assumed that in adopting paragraph (h) Congress intended to use the words "merger" and "consolidation" in their ordinary and accepted meanings. Giving the matter in parenthesis the most liberal construction, it is only when there is an acquisition of substantially all the property of another corporation in connection with a merger or consolidation that a reorganization takes place. Clause (B) of the paragraph removes any doubt as to the intention of Congress on this point.

It follows that there was no reorganization, and consequently no party to a reorganization, in connection with the disposition of petitioner's property. It is unnecessary to pass upon petitioner's other contentions.

[fol. 47] The record presents no reversible error. The petition is denied.

[fol. 48] In United States Circuit Court of Appeals, Fifth Circuit

No. 6347

Pinellas Ice & Cold Storage Co.

versus

Commissioner of Internal Revenue

Judgment—March 29, 1932

This cause came on to be heard on the petition of Pinellas Ice & Cold Storage Company for a review of a decision of the United States Board of Tax Appeals, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that said petition be, and the same is hereby, denied.

[fol. 49] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 50] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 10, 1932

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 36,879. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 182. Pinellas Ice and Cold Storage Company, petitioner, vs. Commissioner of Internal Revenue. Petition for a writ of certiorari and exhibit thereto. Filed June 27, 1932. File No. 36,879.